IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 78 OF 2004

Kenneth Khan)
residing at 6/A, "Pemino",)
Altamount Road, Mumbai - 400 026.).. Petitioner

V/s

1. Air India Ltd.)
a Government Body incorporated under)
the Indian Companies Act, 1956)
having its registered office at)
Air India Building,)
Backbay Reclamation, Nariman Point,)
Mumbai - 400 021.)

2. The Managing Director)
Air India Ltd.)
Air India Building,)
Backbay Reclamation, Nariman Point,)
Mumbai - 400 021.)

3. S.A. Patwardhan)
General Manager, Operations,)
Air India Ltd.)
Old Airport, Santacruz (East),)
Mumbai - 400 029.)

4. Raja Majumdar)
Joint General Manager, Operations,)
Air India Ltd.,)
Old Airport, Santacruz (East),)
Mumbai - 400 029.)

5. Abhjesh Prasad)
Joint General Manager, Operations,)
Air India Ltd.,)
Old Airport, Santacruz (East),)
Mumbai - 400 029.)

6. Deepak Anand)
General Manager, Operations,)
Air India Ltd.,)
Old Airport, Santacruz (East),)
Mumbai - 400 029.)

7. Union of India)

8. Central Vigilance Commission)
Government of India)
Satarkta Bhavan, GPO Complex, INA)
New Delhi - 110 023.).. Respondents

Mr.M.B. Singh for the Petitioner.

Mr.S.K. Talsania i/b M.V. Kini & Co. for Respondent Nos.1 to 6.

Mr.Suresh Kumar for Respondent Nos.7 and 8.

WITH

WRIT PETITION NO. 205 OF 2004

R.J. Khadiwala)
residing at 281, Ground Floor,)
Sidhwa Building, Princess Street,)
Mumbai - 400 002.).. Petitioner

V/s

1. Air India Ltd.)
a Government Body incorporated under)
the Indian Companies Act, 1956)
having its registered office at)
Air India Building,)
Backbay Reclamation, Nariman Point,)
Mumbai - 400 021.)

2. The Managing Director)
Air India Ltd.)
Air India Building,)
Backbay Reclamation, Nariman Point,)
Mumbai - 400 021.)

3. S.A. Patwardhan)
General Manager, Operations,)
Air India Ltd.)
Old Airport, Santacruz (East),)
Mumbai - 400 029.)

4. S.K. Garg)

Addl. General Manager (Engineering),
Air India Ltd.,
Old Airport, Santacruz (East),
Mumbai - 400 029.

5. Abhjesh Prasad
Joint General Manager, Operations,
Air India Ltd.,
Old Airport, Santacruz (East),
Mumbai - 400 029.

6. Deepak Anand
General Manager, Operations,
Air India Ltd.,
Old Airport, Santacruz (East),
Mumbai - 400 029.

7. Union of India

8. Central Vigilance Commission
Government of India
Satarkta Bhavan, GPO Complex, INA
New Delhi - 110 023. .. Respondents

Mr.M.B. Singh for the Petitioner.

Mr.S.K. Talsania i/b M.V. Kini & Co. for Respondent Nos.1 to 6.

Mr.Suresh Kumar for Respondent Nos.7 and 8.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE OF RESERVING THE JUDGMENT : 26TH APRIL 2005

DATE OF PRONOUNCING THE JUDGMENT: 6TH MAY 2005

JUDGMENT : (Per H.L. Gokhale, J.)

1. Two questions arise which are common to both these petitions and, therefore, both these petitions are

being heard and decided together. The Petitioners in these two petitions were working as pilots in Air India. The Petitioner in the first petition, i.e. Writ Petition No.78 of 2004, was the President of India Pilots Guilt (IPG) at the relevant time, whereas the Petitioner in the second petition, i.e. Writ Petition No.205 of 2004, was its member.

2. Following upon the spread of an epidemic known as SARS in South East Asia and the Iraq War in the Middle East, the two Petitioners declined to operate the flights on account of a decision of this IPG. That led to the departmental enquiries against both of them by the Respondents. The date of retirement of both the Petitioners was 31st December 2003. The enquiries could not be completed till then for which both the parties hold each other responsible. The contention of both the Petitioners was that they are workmen within the definition of the said concept under the Industrial Disputes Act, 1947 and are governed under the Industrial Employment (Standing Orders) Act, 1946 and not under the Service Regulations which applied to the executive staff. That being so, the enquiries could not be continued beyond the dates of their retirement after completion of age of 58 years.

3. These two petitions are filed to challenge the continuation of these enquiries beyond the dates of retirement. Both the petitions were admitted by a Division Bench on 26th February 2004 and an interim stay was granted of the disciplinary enquiries pending disposal of the writ petitions. The Respondents were directed to release the amount of Provident Fund to the Petitioners. Insofar as the amounts of Gratuity, Leave Encashment, Unpaid Wages including an allowance known as Shortfall Allowance are concerned, the Respondents were directed to deposit the same in the Court. Initially withdrawal of a part of these amounts except the shortfall allowance was allowed. The two Petitioners were suspended pending inquiry but they were allowed to join back in view of an order of a Division Bench passed on 2nd May 2003 on another writ petition. However, the Respondents did not give them flying duties and it is the contention of the Respondents that they are not entitled to this Shortfall Allowance which is claimed by the Petitioners as they were not given the flying duties but their juniors were given these duties. The two questions which arise in this matter are as follows:-

(A) Whether the 1st Respondent is entitled to continue the departmental enquiry against the two Petitioners beyond their dates of

superannuation?

(B) In the event the enquiries could not be continued, what would be the consequences thereof, particularly on the claim of the Petitioners to the Shortfall Allowance?

4. As far as the first question is concerned, the answer thereto depends on as to whether the services of the Petitioners were governed under the Air India Employees Service Regulations which apply to the executives or whether they were workmen under the Industrial Disputes Act, 1947. The best document of the Respondents in this behalf is the appointment letter of the Petitioners. Thus, clause 12 of the 1st Petitioner's appointment letter dated 8th February 1971 reads as follows:-

> "12. Your employment will be subject to the Air India Employees' Service Regulations & Establishment Orders and such other standing orders or instructions as may be informed from time to time."

5. As against that, we have on record the Respondents' letter dated 9th January 2003 recognising

the 1st Petitioner as a protected workman under section 33(4) of the Industrial Disputes Act. This letter addressed by the General Manager-HRD to the President, Indian Pilots' Guild on the subject of protected workmen records as follows:-

> "This is to convey the Management's approval for according the status of "protected workmen" under Section 33(4) of the Industrial Disputes Act, 1947 read with Rule 61 of the Industrial Disputes (Central) Rules, 1957 to the below mentioned Office Bearers of Indian Pilots' Guild (IPG) as desired by you for the period upto January 3, 2004.
>
> | S.No. | Name | Post Held |
> |---|---|---|
> | 1. | Capt. K. Khan | President |
> | 2. | Capt. Vikrant Sansare | General Secretary |
>
> This supersedes our earlier letter No.IR/141/1781 dated 11th January 2002."

6. The charge sheet leading to the present writ petition charging the Petitioners with refusal to fly and insubordination amongst others is dated 30th April 2003. This charge sheet charges the two Petitioners

with reference to the misconducts as enumerated under the Certified Standing Orders in the following manner:

"3. The above act, if proved, amounts to misconduct under the Certified Standing Orders. You are hereby charged under the Certified Standing Orders as under:

Clause 19(2)(i) Wilful insubordination or disobedience whether or not in combination with others, of any lawful and reasonable orders of superiors.

Clause 19(2)(ii) Participation in an illegal strike or abetting, inciting, instigating or acting in furtherance thereof.

Clause 19(2)(viii) Breach of any law, rules, regulations or orders applicable to the establishment.

Clause 19(2)(xxxi) Refusal to carry out duties in furtherance of work to rule or work to trade practices whether concerted or otherwise.

> 4. You are hereby required to submit your explanation within 48 hours from the date of issuance of the chargesheet as to why further disciplinary action for major penalty should not be taken against you, failing which it will be presumed that you have no satisfactory explanation to offer and further action will be taken in accordance with the provisions of the Certified Standing Orders."

7. Thereafter when the enquiry started, an office order was issued on 6th May 2003 appointing an Enquiry Committee. Para 2 of this office order stated as follows:

> "The Committee shall hold enquiry at the date, time and place as may be fixed from time to time as provided in the Certified Standing Orders applicable and submit its Report in duplicate to the undersigned, as early as possible."

The office order was signed by the Additional General Manager (Operations). Subsequently, one more charge was added to the above referred charges by supplementary charge sheet dated 9th May 2003 issued by the Additional

General Manager (Operations). It is stated therein that in the charge sheet dated 30th April 2003 certain charges under the Certified Standing Orders were already levelled against the two Petitioners. Thereafter the attention of the two Petitioners is invited to Standing Order 19(1)(a) whereunder it is the duty cast upon every workman that he shall at all time maintain absolute integrity and devotion to duty. It is then alleged that they incited and instigated the members of IPG not to operate the flights to Kuwait, Singapore and Hong Kong. Then the following charge is added:

"The above alleged act amounts to misconduct under the Certified Standing Orders and you are therefore hereby charged under the Certified Standing Orders as under:-

Clause 19(2)(xviii)	Distribution or exhibition of any newspapers, handbills, pamphlets or posters on the premises of the establishment or at the work place without the previous sanction of the Competent Authority."

8. The 1st Petitioner sought to engage an advocate by his letter dated 15th May 2003. The Convenor, Joint

General Manager (Operations), made the following endorsements thereon:

> "As per provisions of CSO (i.e. Certified Standing Orders) applicable to you, of which IPG is a party, employee workman can be your Defence. Hence engaging the service of a legal counsel does not arise.
>
> The proceedings fixed on 16th May, 2003 shall be held as scheduled.
>
> sd/-
>
> CONVENOR"

9. It is material to note that a distinction is made between the Executive Pilots and the other Captains. Whereas the first group of employees comes under the Executive and are governed under the Service Regulations, the Captains are covered under the Standing Orders framed under the Industrial Employment Standing Orders Act, 1946. This **Clause 2 of the Air India Employees Service Regulations** provides as follows:-

> "**2. COMMENCEMENT AND APPLICATION**:

These Regulations shall come into force on March 30th, 2000 and shall apply to all employees who are in the general category of officers including Technical Officers and

(i) **Executive Pilots**
(ii) Executive Engineers
(iii) Executive Flight Engineers
(iv) Executive Cabin Crew, as also

Provided that in the case of part-time / contract employees, the Managing Director may by general or special order in writing, exclude or limit the application of any or whole of these Regulations."

As against this, the **Certified Standing Orders** applicable to the workmen of Air India provide in Standing Order 3 for the classification of workers. The relevant Clauses (a), (b) and (c) thereof read as follows:-

3. CLASSIFICATION OF WORKERS

(a) Workmen shall be classified as:

(i) Permanent

(ii) Probationer

(iii) Temporary

(iv) Casual

(v) Part-time

(vi) Apprentice/Trainee

(b) A "Permanent" workman means a workman who has been engaged to fill a permanent vacancy on permanent basis and whose appointment has been confirmed in the vacancy in writing after the satisfactory completion of probation for a minimum period of six months or twelve months, in respect of workmen in categories as many as mentioned at **Annexure "A" and "B"** respectively appended on these orders.

(c) A "Probationer" means a workman who is provisionally employed on probation to fill a permanent vacancy in a post and who has not been confirmed in writing in that post. If a permanent workman is employed as a probationer in a new

> post he may, at any time, during the probationary period be reverted to his substantive permanent post."

When we turn to **Annexure'B'**, we find that it contains a list of category of workmen who are appointed on probation for a period of 12 months. Subsequently, as noted above, on completion of satisfactory period of probation, one is confirmed and becomes permanent. The list contains 13 categories of workmen giving their Designations wherein First Officer and Senior Captain appear at Sr.No.4. Standing Order 30 provides for the age of retirement. In clause (1) thereof, it provides that the workman shall retire from the services of the Company on attaining the age of 58 years subject to the exceptions which are provided therein.

10. The Petitioners have their explanation as to why enquiry could not be completed in time whereas the Respondent Management blames the Petitioners for delaying the same. The fact however remains that the enquiry was not completed until 31st December 2003. The Petitioners, therefore, treated that they stood retired. However, for the first time, they received a letter dated 31st December 2003 informing them that the enquiry

will continue under Service Regulation 71A. This letter addressed to the 1st Petitioner by the General Manager (Operations) stated as follows:-

> "Capt. K. Khan
> Senior Captain
> Staff No.26290
>
> Sub: Disciplinary Proceedings
>
> . Though you have stood superannuated with effect from 1/1/2004, the Disciplinary Proceedings referred above shall continue under the Air India Employees' Service Regulations 71(A) till its logical end in accordance with law, in view of the seriousness of the charges levelled against you.
>
> 1. You are therefore called upon to attend the enquiry proceedings before the Enquiry Committee as and when fixed, failing which, the Enquiry Committee will be free to proceed with the enquiry ex-parte, and the Management would be at liberty to pass appropriate orders in accordance with law, which please note.

2. The enquiry will commence from the stage it was left.

3. Your retirement benefits are being held back under Air India Employees' Service Regulation 71(A) until the conclusion of the enquiry and final order passed in the Disciplinary Proceedings.

4. For the purpose of attending the enquiry, you would be paid reasonable allowances as determined by the Departmental Head, to compensate for your expense and time devoted to attend the Enquiry Proceedings, under Regulation 71(A)(iii)."

It is this letter which led to the filing of the writ petitions and order of admission and stay on enquiry passed on 25th February 2004.

11. Since Regulation 71A is referred in the letter dated 31st December 2003 extending the enquiry, it becomes necessary to refer to the same. We have on record a letter dated 15th November 2001 from Air India which incorporates the amended Regulation 71A. This letter states as follows:

" The Board in the 74th Meeting held on August 31, 2001 amended Regulation 71 of the Air India Employees' Service Regulations which is applicable to employees belonging to Managerial and Supervisory category. **The new Regulation 71-A** is reproduced below:

(i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment or on contract, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

(ii) During the pendency of the disciplinary proceeding, the disciplinary authority may withhold payment of retirement dues including gratuity, for ordering the recovery from retirement dues/gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceeding or judicial proceeding to have been

guilty of offences / misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on re-employment or on contract after retirement. However, the provisions of Section 7(3) and 7(3A) of Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.

(iii) For the purpose of the completion of the disciplinary proceedings which have been initiated prior to his retirement, the employee shall attend the pending enquiry / disciplinary proceedings till the completion of the same in the same manner, discipline and obedience as if he was in service failing which Departmental Head should be within his right to withhold his retirement dues and post-retiremental facilities and benefits.

An ex-parte Departmental Enquiry shall be conducted in case the concerned employee

repeatedly fails to respond to the Notice of Enquiry Committee. For the purpose of attending the enquiry/disciplinary proceedings, the retired employee shall be paid reasonable allowance as determined by the Departmental Head to compensate for his expenses and the time devoted to attend the enquiry proceedings."

12. Now, what is material to note is that these Regulations are framed under section 45 of the Air Corporation Act, 1953. In **Air India v. Union of India & Ors. - 1991 Lab. I.C. 451**, a question was squarely raised as to whether these Regulations obliterate the applicability of the Industrial Employment (Standing Orders) Act, 1946 to the workmen who are otherwise covered thereunder. In a judgment rendered by B.N. Kirpal J. (as His Lordship then was) for a Division Bench of the Delhi High Court, it was squarely held that the Air Corporation Act should not be regarded as obliterating the applicability of the Industrial Employment (Standing Orders) Act. It could not be regarded as a special Act leading to any such effect. In para 9 of the judgment, the Division Bench clearly held that any direction issued by the Central Government under section 34 of that Act, insofar as they are

contrary to the Standing Orders Act, would have to be ignored by the Corporation. The Division Bench observed as follows:

> "It is true that the Central Government has granted approval to the regulations which have been framed but those regulations deal with not only the workmen but also with other categories of employees who are not covered by the Standing Orders Act. Merely because the Central Government has granted approval to the regulations, including those regulations which deal with the workmen, cannot mean that the Standing Orders Act ceases to apply. To the extent that the Central Government has granted approval to the regulations dealing with the workmen, the exercise would be regarded as being without authority of law. Because Section 45(2)(b) does not enable the Air India Corporation to frame regulations in connection with the workmen, who are to be governed by the Standing Orders Act, the framing of those regulations and the approval thereof, would be regarded as non-est. Similarly, any directions issued by the Central Government under Section 34 in so far as they are contrary to the

> Standing Orders Act, would have to be ignored by the Corporation."

This order was carried in appeal to the Apex Court in **Air India v. Union of India & Ors. - (1995) 4 SCC 734** and the appeal was dismissed. The said appeal involved the question whether in presence of Air India Employees Regulations, 1963 framed under section 45 of Air India Corporations Act, 1953, the Industrial Employment (Standing Orders) Act, 1946 was applicable to Air India. Meanwhile the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 came into effect and by Section 11 repealed the Air Corporations Act, 1953. The employees contended that after the repeal of the parent Act the said Regulations no longer survived and that the same could no longer be relied on by the appellant Air India, wherein the appellant Air India contended that Section 8 of the 1994 Act saved the said Regulations. Rejecting the Air India’s contention and dismissing the appeal, the Court held that if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. There is no room for implying anything in this behalf. Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention them.

13. A reliance is also placed on behalf of the Petitioners on the judgment in the case of **Bhagirathi Jena v. Board of Directors, O.S.F.C. -(1999) 3 SCC 666** which holds that in the absence of specific provision for the continuation of a departmental enquiry after retirement, the same would lapse. It is submitted that in the instant case, the Service Regulations did not apply to the Petitioners and under the Standing Orders, the age of retirement was the completion of 58 years and there was no provision for continuation of the enquiry thereafter and, therefore, the enquiry lapsed.

14. On behalf of the Respondents, it was submitted that the Standing Orders were not exhaustive. It was also pointed out that the appointment letter must be given its significance when it states in clause 12 that the Service Regulations would be applicable. It was further pointed out that the Standing Orders were sought to be amended by seeking to continue departmental enquiries thereunder after retirement. However, the fact remains that no such amendment has been granted. Last but not the least, reliance was placed on the provisions of the Central Vigilance Commission Act, 2003 and it was submitted that in the instant case, the enquiry was suggested by the Central Vigilance

Commission and under section 8 (g) and (h) of the said Act, the Commission was empowered to tender advice to the Central Government and the Corporations established under the Central Act, and to exercise superintendence over the vigilance administration. The advice had to be implemented.

15. We have considered the rival submissions. It is true that the appointment letter of the Petitioners did refer to the Service Regulations, but the fact remains that except for stating the same at that time, at no point of time thereafter the Petitioners were treated as governed as under the Service Regulations.The 1st Petitioner was clearly given in writing that he was a protected workman under the Industrial Law. The enquiry was conducted into the charges which are traceable to the Standing Orders framed under the Industrial Employment Standing Orders. The entire correspondence concerning the enquiry is on the footing that the said Act is applicable. That apart, as held by the Delhi High Court as well as the Apex Court in the case of Air India itself, once the earlier statute was repealed, the Regulations thereunder did not survive. The Delhi High Court in its Division Bench judgment had held that the Regulations under the Air Corporation Act were non-est as far as the employees covered under the

Industrial Employment (Standing Orders) Act are concerned. In a matter like this, one is concerned with the nature of contract of employment of the Petitioners. The Standing Orders and the Service Regulations lay down the rules for different categories of employees governing them. The Petitioners being captains were specifically mentioned as covered under the Standing Orders and not the Service Regulations. The Standing Orders did not provide for continuation of the enquiry beyond the date of retirement. Though there is a reference to the service regulations in the appointment letter, apart from the fact that the regulations did not apply to industrial workmen as held by the Delhi High Court, the Respondents-Air India also did not press them into service at any point of time. On the other hand, they clearly gave it in writing that the Petitioners were industrial workmen and that the enquiries against them were being conducted under the Standing Orders framed under the Industrial Employment (Standing Orders) Act. This being the position, whether there is any direction by the Central Vigilance Commission or otherwise, the contract of service of the Petitioners comes to an end on their completion of 58 years. As held in Bhagirathi Jena’s case, the enquiry would lapse thereafter. Consequently, prayer (a) of this petition will have to be allowed, namely that the continuation of

the enquiry will have to be held bad in law and the letter dated 31st December 2003, referred to hereinabove, continuing the enquiry thereafter will stand quashed and set aside. The Petitioners shall be deemed to have retired at the end of December 2003.

16. Prayer (b) of this petition seeks retiral dues. As far as the gratuity, leave encashment, unpaid wages and other benefits are concerned, there would be no difficulty. These amounts were deposited in this Court and have been partly withdrawn by the Petitioners. However, the problem comes with respect to the allowance known as Shortfall Allowance. The amount to the tune of Rs.15 lakhs has been claimed by each of the Petitioners for that purpose. Mr.Singh, learned counsel for the Petitioners, relies upon the Agreement in this behalf which provides that if the Senior Pilot is ready and willing for duty and is not provided the same, then the shortfall between his wages and what would be earned by the junior to him will be made good by the Management. The relevant terms of settlement in this behalf read as follows:

> "The line earnings of a Senior Pilot shall not be less than a Junior Pilot. All Commanders would be taken as Senior to all First Officers

and the inter-se seniority of Commanders and First Officers would be as per their respective line seniority. The hierarchy in the aircraft will be maintained.

If the line earnings of a Junior Pilot is more than the Senior Pilot then the shortfall will be made up provided the Senior Pilot was available for active flight duties.

Shortfall in Senior's earnings shall be made good by paying a senior his hourly rate multiplied by the difference between his flying hours and the flying hours of any junior flying highest number of hours in that month. The shortfall so calculated will be paid every three months in Indian rupees.

For this purpose, the monthly hours shall comprise all flights originating from base in a given calendar month."

The fact remains that although the Petitioners had resumed on duty after the order passed by this Court on 2nd May 2003, they were not allowed to fly. Mr.Singh submits that it is only when the grounding is ordered by

the Director General of Civil Aviation that any such allowance can be denied and not otherwise.

17. Mr.Talsania, learned counsel for the Respondents, on the other hand, submits that the Petitioners cannot dictate Air India that they must be given flying duty. In deference to the order of this Court, they were allowed to join. Practically all the pilots were given flying duty as well. However, as far as the leaders of the Union are concerned, the Management thought it prudent not to give them flying duty and it was their right to do so. He submitted that this grounding was not challenged. The denial of flying led to denial of flying allowance. That was also not challenged. If a particular service was not sought and hence not rendered, one would not be entitled to the allowance arising therefrom. Mr.Talsania relied upon a judgment of the Apex Court in the case of **Dilbagh Rai Jerry v. Union of India & Ors. - AIR 1974 SC 130**. In that case, the question involved was concerning the claim of running allowance by a Guard in Northern Railway. The Apex Court held in para 23 that it cannot be said that running allowance was due to appellant as part of his wages for the entire period of his inactive service. Travelling allowance or running allowance is claimable, if the officer has travelled or run, not

otherwise. He pointed out that in **Bharat Electronics Ltd. v. Industrial Tribunal, Karnataka - AIR 1990 SC 1080**, similar view is taken with respect to the claim for night shift allowance by a bus driver. The Apex Court held that night shift allowance was not part of wages and it would become due only in the event of discharging the night duty.

18. We have considered the rival submissions on this behalf and, in our view, the submission of Mr.Talsania is well taken. All that the petition seeks to challenge is continuation of enquiry beyond the date of retirement and to that extent what is contended in the petition is correct and the Petitioners should be deemed to have retired on 31st December 2003. To that limited extent, the petitions will succeed and the Petitioners would be entitled to all retiral benefits such as gratuity, provident fund, any amount of interest which is payable on unpaid gratuity and provident fund as well as pension. They will be also entitled to identity cards as retired employees and flying passages subsequent to their retirement. However, as far as the service which is not rendered, one cannot say that the Petitioners have right to receive any allowance for that. To say that juniors were given duty and the Petitioners were not is one thing in normal

circumstances when one is made to wait while on duty and junior is given work. In the present case, the Management had not given flying duty to the Petitioners at all. They had only allowed them to resume. If the Petitioners were aggrieved by the said denial, they could have raised an industrial dispute concerning the same or approached the High Court and claimed the right to fly if that could be insisted upon. The Respondents were facing a situation where under the leadership of the persons concerned, their Air services were disturbed. It was necessary to restore them. Many of the pilots did join on duty, but because of the stand taken by the leadership of the Union, a number of difficulties were caused to the passengers and to the reputation of the Airlines. The Management had its own reasons to ground the Petitioners. Unless that decision is challenged and set aside, one cannot claim this right to receive the shortfall allowance which would be available in normal circumstances. As far as this prayer is concerned, the same stands rejected.

19. Rule is thus made absolute in part though without any order as to costs.

20. Prothonotary & Senior Master will release the amount of gratuity and leave encashment and all other

amounts other than shortfall allowance, which have been deposited in this Court with accrued interest to the Petitioners. As far as the amount of shortfall allowance with accrued interest is concerned, that will be returned to the 1st Respondent in each of the matters.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)